IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA 140 of 1998 alongwith Cross Objections 209 of 1998.

Date of decision September 19, 2007.

H.P. State Forest Corporation …**Appellant.**

Versus

Shri Naginder Singh and others …**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant **Mr. Rakesh Jaswal, Advocate.**

For the Respondents: **Mr. Bimal Gupta, Advocate.**

Dev Darshan Sud, J. (Oral).

This appeal has been preferred by the defendant against the judgment and decree of the learned trial Court decreeing the suit of the plaintiff for recovery of damages.

The brief facts are that the plaintiffs – respondents were the owners of a double storeyed building situated on a part of khasra No. 76 of village Ser, Tehsil Pachhad, District Sirmaur. The appellant-defendant was a tenant in the ground floor of the

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

building having occupied it as such in the year 1992. On the night intervening 5th and 6th September, 1996 a fire broke out in the ground floor resulting in the destruction of the entire building.

The plaintiffs have pleaded that the ground floor had been rented out to the defendant where the defendant had stored large quantities of resin. No proper safety measures had been adopted by them resulting in the fire going out of control destroying the entire building.

Defendant appellant admitted the tenancy and that resin was stored in the ground floor. It was pleaded that proper precautions against fire had been taken by them for which purpose, a chowkidar had also been employed for guarding the building etc. A specific defence was taken to the effect that the building was set on fire by one Prem Singh who was inimical towards the plaintiffs. A criminal case had also been registered against this person.

After a detailed consideration of evidence on record, the suit of the plaintiffs was decreed in the sum of Rs.1,56,105/- alongwith interest @ 6% per annum from the date of suit till payment.

It must be noticed that during the trial, the fact regarding creation of tenancy, stocking of resin tins and the building catching fire were not disputed. At this juncture, it must be noticed that resin is highly inflammable. It is by now well settled that damage caused for storing explosives and dangerous substances is actionable perse. The rule of strict liability as followed for decades, laid down in *Ryland versus Fletcher* is no longer applicable in India. (See M.C.Mehta and another v. Union of India and others AIR 1987 SC 1086). It was held by the Hon'ble Supreme Court:

> **"(31) We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher (1868 (19) LT 220) apply or is there any other principle on which the liability can be determined. The rule in Rylands v. Fletcher was evolved in the year 1866 (1868?) and it provides that a person who for his own purpose brings on to his land and collects and keeps there anything likely to do mischief if it**

escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a

modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry a part of the developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We

are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognize the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in Rylands v. Fletcher as is developed in England recognizes certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the

community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on

account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra).” **(Emphasis supplied).**

Turning to the evidence on record, it would be interesting to note that the case set up by the defendant – appellant was that the building caught fire not because of negligence on the part of the appellant – defendant but was deliberately set on fire by one Shri Prem Singh who was inimical to the plaintiffs. It was alleged that he was seen committing this mischief by the chowkidar of the defendant – appellant. Further allegation is that First Information Report has been registered against this miscreant. It remains beyond explanation as to why Randeep Singh, who is the chowkidar, has not been examined by the defendant – appellant. Barring these allegations, there is nothing on record to show that Prem Singh was responsible for setting the premises on fire. DW Devinder Dutt who is employed as Assistant Manager with the appellant has not seen Prem Singh sitting fire to the building. The First Information Report has not been proved on record. This witness states that the building was used for storing resin. He states "*Aag lagne par chowkidar ne shor machaya va aag bujhane ki koshish ki prantu aag na bujhi. Ek Vyakti Prem Singh ko chowkidar ne aag laga kar bhagte hue dekha. Jiske Pita ka naam Shri Prithi Singh, niwasi gaon Aanji tha. Chowkidar ka shor sun kar baadi jo samane rehta tha va ek*

aur makan wala jo thori door par tha veh vahan aaye parantu aag na bujhi. Chowkidar ne police mein rapat darj karwai jo Ext. D-6 hai. (objected to) tatha Block Officer va guard ko report ki, jis par Block Officer Police ko lekar mouka par pahuncha." **In his cross examination, he admits that these facts were narrated to him by the chowkidar and the guard and both of them are still in the employment of the plaintiff. In these circumstances, it is a bit strange as to why both of them have not been examined. Merely marking a document as an exhibit will not prove its contents. Ex.D-6 has been lodged by Randip Singh, Chowkidar who has not been summoned as a witness to prove this document. No attempt has been made to bring on record the subsequent follow up action by the police. The plea of the appellant defendant has been rightly rejected by the learned trial Court. The deposition of DW-1, the sole witness produced on behalf of the appellant –defendant is nothing but hearsay evidence which is to be rejected outright. The appellant – defendant having failed to establish the plea taken up by it in the written statement cannot be now allowed to urge that the judgment and decree passed by the learned trial Court is illegal or against law. As already held by me, resin is a dangerous and inflammable**

substance and there is nothing on record to show that adequate care and precaution had been taken by the appellant-defendant. In the circumstances, this appeal is dismissed as being without merit. There shall be no order as to costs.

Cross Objection 209 of 1998.

The plaintiffs have filed cross objections claiming damages to the extent as claimed in the plaint and have disputed the correctness of the decree in terms of quantum which has been passed in their favour.

While deciding issue of damages, the learned trial Court has held that the evidence does not establish the full extent of the damages as claimed. On an assessment of Ex.PG and the evidence of PW-2, retired Assistant Engineer from the Himachal Pradesh Public Works Department, learned trial Court rightly concluded that the plaintiffs had not been able to establish the amount claimed in terms of the quantum and rightly assessed the loss from the material on the record. I am not persuaded to take a different view as the material on record does not establish the claim of the plaintiff/ cross objector as claimed in the cross objections. These cross objections are without merit and are accordingly

dismissed. There shall be no order as to costs.

September 19, 2007(PC). (Dev Darshan Sud), J.